

HONORABLE THOMAS O. RICE

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*Counsel for Defendant Ryan Lamberson*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-00395-TOR

DECLARATION OF J.  
CHRISTOPHER LYNCH IN  
SUPPORT OF DEFENDANT'S  
LAMBERSON'S RESPONSE TO  
PLAINTIFF'S MOTIONS IN  
RESPONSE TO DEFENDANT'S  
SECOND AMENDED ANSWER  
AND AFFIRMATIVE DEFENSES  
AND COUNTERCLAIM

DECLARATION OF  
J. CHRISTOPHER LYNCH - 1

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1 I, J. Christopher Lynch, declare as follows:

2       1. I am over 18 years of age and am competent to testify. I make this  
3 declaration based on my own personal knowledge. I am one of the attorneys for  
4 Defendant, Ryan Lamberson.

5       2. Through discovery, Mr. Lamberson requested production of any  
6 agreements between Elf-Man LLC and Vision Films, Inc. Plaintiff produced such  
7 an agreement dated May 1, 2012. That agreement is attached separately under seal  
8 as Exhibit 1 hereto. That agreement at page 1 makes an assignment of the  
9 exclusive rights in the movie *Elf-Man* from Elf-Man LLC to Vision Films, Inc.  
10      11      12      13      14      15      16      17      18      19      20      21      22      23      24      25      26  
("Vision Films").

14       3. On February 15, 2013, Elf-Man LLC issued a "to whom it may  
15 concern" memorandum wherein it acknowledged that it had assigned the exclusive  
16 rights in *Elf-Man* to Vision Films. That memorandum is attached separately under  
17 seal as Exhibit 2 hereto.

19       4. Vision Films is the plaintiff in the Eastern District of Tennessee, Case  
20 No. 3:13-cv-00128, wherein Vision Films states that it is the owner of the  
21 exclusive rights in *Elf-Man*. This Complaint is Exhibit 3 of the Second Amended  
22 Answer, Affirmative Defenses and Counterclaims (ECF No. 36-3). Exhibit 13 of  
23 that Second Amended Answer, Affirmative Defenses, and Counterclaims is the  
24  
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1 chart of alleged infringements about which Vision Films complains, and it can be  
2 seen that the times and dates of alleged infringement overlap with the times and  
3 dates of the charts of alleged infringement in the cases Elf-Man LLC has filed to  
4 enforce copyright in the same movie. Exhibits 4-12 of that Second Amended  
5 Answer, Affirmative Defenses, and Counterclaims are the charts from the Elf-Man  
6 LLC case which provide the data from which this overlap in time and date of  
7 alleged infringement can be seen.

10       5. Vision Films takes the position that its customary Sales Agency  
11 Agreement gives it the exclusive rights under copyright to enforce the copyright  
12 against infringers. Here are four examples: (1) Vision Films has a Sales Agency  
13 Agreement with Ambrosia Pictures Pty Ltd which was the original copyright  
14 holder for the film *Blood Money*, and Vision Films is the plaintiff in *Vision Films*  
15 v. *Does 1-30*, Eastern District of Missouri, Case No. 4:13-cv-00020 to enforce that  
16 copyright. (2) Vision Films has a Sales Agency Agreement with D3 Productions  
17 LLC which was the original copyright holder for the film *Division III: Football's*  
18 *Finest*, and Vision Films is the plaintiff in *Vision Films v. Does 1-10*, Eastern  
19 District of Missouri, Case No. 4:13-cv-00290 to enforce that copyright. (3) Vision  
20 Films has a Sales Agency Agreement with Hyrax Entertainment LLC which was  
21 the original copyright holder for the film *The Employer*, and Vision Films is the  
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1 plaintiff in *Vision Films v. Does 1-38*, Southern District of Ohio, Case No. 2:13-cv-  
2 00855 to enforce that copyright. (4) Vision Films has a Sales Agency Agreement  
3 with Rushlights LLC which was the original copyright holder for the film  
4 *Rushlights*, and Vision Films is the plaintiff in *Vision Films v. Does 1-9*, Southern  
5 District of Ohio, Case No. 2:13-cv-00856 to enforce that copyright.  
6

7       6. Mr. Lamberson has served a Subpoena on Vision Films requesting  
8 copies of those Sales Agency Agreements to confirm they are the identical form to  
9 that signed by Elf-Man LLC on May 1, 2102. To date, Vision Films has not  
10 produced any of the documents.

11       7. Mr. Lamberson has served Requests for Production on Elf-Man LLC  
12 to produce any agreements between it and its German “investigators” Daniel  
13 Macek and Michael Patzer. Elf-Man LLC refused to produce these documents.  
14 Mr. Lamberson initiated a telephonic discovery conference with the Court which  
15 was held February 27, 2014. At the conference, the Court ordered plaintiff to  
16 produce these documents or to provide a narrative explanation of the relationship.  
17 To date, Elf-Man LLC has not produced any responsive documents or narrative  
18 explanation. Defense counsel has sent reminders and requests to comply with the  
19 Order on March 14, 2014 (Exhibit 3 hereto), March 31, 2014 (Exhibit 4), but Elf-  
20 Man LLC remains in contempt of the Order.  
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DECLARATION OF  
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1       8. We know, however, that plaintiff has been in communication with  
2 these investigators because on April 3, 2014, counsel for Elf-Man LLC informed  
3 counsel for Mr. Lamberson that Mr. Patzer “will expect to be paid his hourly rate  
4 in addition to his travel expenses” in order to be deposed. (Exhibit 5 hereto at  
5 pages 2-3.) Mr. Patzer is a fact witness residing in Germany identified on the  
6 initial disclosures as a fact witness and also as the person responsible for the data  
7 provided in response to request for Production No. 12, as plaintiff’s counsel  
8 identifies in correspondence dated February 27, 2014. (Exhibit 6 hereto).

9       9. Mr. Lamberson has served Requests for Production asking Elf-Man  
10 LLC to produce copies of the links, trackers, and torrent sites allegedly accessed by  
11 Mr. Lamberson to allegedly download the movie. Nothing has been produced and  
12 plaintiff claims it has no such evidence (despite the allegations of the First  
13 Amended Complaint ¶¶ 120-121, 127, and 147-149 that defendant accessed these  
14 links, trackers and torrent sites).

15      10. Mr. Lamberson has served Requests for Production asking Elf-Man  
16 LLC to produce copies of the any demand letters or takedown notices to third-  
17 parties demanding cessation of infringement of *Elf-Man*. Nothing has been  
18 produced and plaintiff claims it has no such evidence.

1       11. PACER records for the Elf-Man LLC *Elf-Man* case (SD OH Case No.  
2 2:13-cv-00308) show that it was filed on April 3, 2013 and an expedited “Motion  
3 for Discovery Prior to Rule 26 Conference” was filed April 24, 2013. The Court  
4 granted the discovery motion on May 5, 2013 and Elf-Man LLC issued its  
5 subpoenas. The case was then dismissed by the court on February 7, 2014 for  
6 failure to prosecute.  
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9       12. PACER records for the Vision Films *Elf-Man* case (ED TN Case No.  
10 3:13-cv-00128) show that it was filed on March 8, 2013 and an expedited “Motion  
11 for Discovery Prior to Rule 26 Conference” was filed at the same time. The Court  
12 granted the discovery motion on April 7, 2013 and Vision Films issued its  
13 subpoenas. The case was then dismissed by the court on February 24, 2014 for  
14 failure to prosecute.  
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17       13. Mr. Lamberson’s Memorandum in Opposition to plaintiff’s current  
18 Motion cites to a new Ninth Circuit case not yet reported in the Federal Reporter:  
19  
20 *Rock River Communications v. Universal Music Group*, \_\_\_ F.3d \_\_\_, 2014 WL  
21 223689 (January 22, 2014). A copy of this opinion is attached as Exhibit 7 hereto.  
22  
23

24       14. Mr. Lamberson has complied with the procedural pre-requisites for a  
25 Motion under Fed. R. Civ. P. 11 for sanctions for failure to withdraw its First  
26 Amended Complaint. That request to withdraw the First Amended Complaint,  
27

1 citing Fed. R. Civ. P. 11 was made by letter to plaintiff's counsel dated October 11,  
2  
3 2013.

4 I declare under penalty of perjury under the laws of the State of Washington  
5 that the foregoing is true and correct.  
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7 DATED this 11<sup>th</sup> day of April, 2014, in Spokane, Washington.  
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9  
10 LEE & HAYES, PLLC  
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12 By: s/ J. Christopher Lynch  
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20  
21 *Counsel for Defendant Ryan Lamberson*  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of April, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Maureen C. VanderMay

[efile@vandermaylawfirm.com](mailto:efile@vandermaylawfirm.com)

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By: *s/J. Christopher Lynch*

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**DECLARATION OF  
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